



New Motor Vehicle Board

In-Site

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NEW MOTOR VEHICLE BOARD HOLDS SECOND ANNUAL INDUSTRY ROUNDTABLE

The New Motor Vehicle Board's 2003 Annual Roundtable was a success, with several of the Roundtable topics receiving coverage in the June 2003 edition of Ward's Dealer Business magazine (Ward's).

In the article *Is California Dreaming?* Ward's reported on the Roundtable discussion regarding challenges presented to both the industry and consumers concerning the result of the transition to fuel cell vehicles. While all participants indicated they were in favor of cleaner cars, the participants discussed concerns about the implementation of the Zero Emission Vehicle (ZEV) mandate.

"There are a number of technological challenges for auto companies to overcome in order to reach zero emissions by 2010," said Winston H. Hickox, Secretary of the California Environmental Protection Agency. "It's not just developing a different internal combustion engine. This is big."



Left to right: Bruce Ishimatsu, Esq., Winston Hickox, Secretary, California Environmental Protection Agency, Craig Samara, National Franchise Manager, Aston Martin-Jaguar-Land Rover

"We're committed to new technology for cleaner air," said Bob Dutton, Toyota Motor Sales U.S.A. "But we're talking about a commercial product. If there's a market, manufacturers will vigorously pursue it. If there's not, it won't work."

Ward's also quoted Peter Welch, the California Motor Car Dealers Association's chief lobbyist. "Californians are proud of what the state's air board has done in the past. Cars are 96% cleaner than they were 15 years ago. But we went off the map with the ZEV mandate. Those vehicles stand to be expensive, strangely configured and with limited functionality. Fuel cells are promising, but the verdict is still out. Don't make dealers and manufacturers spend hundreds of millions of dollars on technology that might not work, just because you can make them. We're killing ourselves because we're looking at this from extremes."

Also reported by Ward's in the article *Those Irrepressible Satisfaction Surveys* was the Roundtable topic regarding the manufacturers use of customer satisfaction scores to evaluate dealers.

"Dealers pay significant attention to those surveys. They're very concerned and take it very seriously," said Board member Tom Flesh. "Dealers often do their own surveys."

"I've always found it interesting that satisfaction surveys are such an issue in the auto industry, because they aren't unique to it," said Frank Dunne, General Motors

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Left to right: Board members and staff - Robert Branzuela, Angelo Quaranta, David Wilson, Glenn Stevens, Tom Flesh



Left to right: Carrie Catherine, Franchise Development Manager, Aston Martin-Jaguar-Land Rover, Nancy Davies, Vice President, Retail Market Development, Toyota Motor Sales, U.S.A., Inc., Bob Dutton, Franchise Affairs Strategy Manager, Toyota Motor Sales, U.S.A., Inc.

Corp.'s executive director, vehicle sales, service and marketing-retail relations. "Actually, the auto industry was relatively late in embracing them. Since then, auto makers have found the surveys as "extremely useful diagnostic tools," says Dunne. "They're ultimately used as a carrot and stick for dealers; a carrot for retailers who score high, a stick for dealers who don't. The carrot takes the form of rewards, trips, incentives and early delivery of hot products. The stick is mainly "constructive criticism," says Dunne.

Other issues addressed at the Roundtable included issues surrounding kit cars not meeting safety and emission requirements, and the encouragement and facilitation of ethnic and gender diversity among dealer bodies.

SAN FERNANDO VALLEY PROJECT UPDATE

Ron Sobrero, General Manager, Dealer Relations, Vehicle Sales, Service and Marketing, General Motors Corporation (GMC), along with Michael Rovinski, Esq., Gus Garcia, and Wes Rydell, updated the members of the Board regarding the status of the San Fernando Valley Project at the June 17, 2003, meeting. Mr. Sobrero reported that the original 10% investment by Rydell Automotive Group has increased to 35%. Gus Garcia, who presently owns 40% of Rydell's share of the dealerships, is in the process of buying out Rydell, and plans to quickly complete the purchase.

This issue initially came before the Board on November 3, 1998, concerning whether GMC violated the Vehicle Code in its acquisition of several dealerships in the San Fernando Valley and whether the dealerships were being operated as factory stores in competition with dealerships owned by private capital. A DMV investigation ensued and it was found that the operation of Rydell Automotive Group fell within the parameters established by the Vehicle Code and that a bona fide relationship existed between it and GMC.



Gus Garcia, Rydell Automotive Group

IN-SITE



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Gray Davis, Governor

California New Motor Vehicle Board

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Left to right: Robert Branzuela, David Wilson, Glenn Stevens

DAVIS REAPPOINTS MEMBERS TO NMVB

On May 1, 2003, Governor Gray Davis announced the reappointments of Robert V. Branzuela, Glenn E. Stevens, and David W. Wilson as members of the New Motor Vehicle Board.

Mr. Branzuela, of Hillsborough, has been a member of the Board since 2002. Mr. Stevens, of Los Angeles, has been a member of the Board since

2000, and currently serves as President. Mr. Wilson, of Orange County, has been a member of the Board since 2000, and currently serves as Vice President.



Board member Alan Skobin

ALAN SKOBIN APPOINTED TO LOS ANGELES POLICE COMMISSION

Dealer member Alan Skobin, the vice president of Galpin Ford in North Hills, will take the Los Angeles Police Commission seat of Bert Boeckmann, owner of Galpin Ford. Mr. Skobin received the appointment based on his legal expertise as an attorney, his understanding of law enforcement issues, and his deep roots in the San Fernando Valley.

CONGRATULATIONS TO OUR OUTSTANDING DEALER MEMBERS

Ford Motor Company 2002 President's Award

Alan Skobin
Galpin Ford
North Hills, California

Toyota Motor Sales, U.S.A., Inc. President's Award

David Wilson
South Bay Toyota
Gardena, California

David Wilson
Toyota of Orange
Orange, California

David Wilson
Right Toyota
Scottsdale, Arizona



Board members Alan Skobin and David Wilson

David Wilson
Toyota of Riverside
Riverside, California

David Wilson
Toyota of Orange
Orange, California

Lexus 2002 "Elite of Lexus"

David Wilson
Desert Lexus

David Wilson
Tustin Lexus

Toyota Motor Sales, U.S.A., Inc. Board of Governors

David Wilson
Right Toyota
Scottsdale, Arizona

David Wilson
Toyota of Riverside
Riverside, California

BOARD MEETING RECAP

April 24, 2003

- Jeff Estabrooks, incoming President of the California Motor Car Dealers Association was presented a congratulatory letter and lapel pin. Also recognized were Nick Shamis, and Asad Farah of the Felix Automotive Group.
- The Board was informed it is in full compliance with the 1996 Performance Audit conducted by the Business, Transportation and Housing Agency.
- The Board received its semi-annual update on staff training programs.
- The number of monthly hits to the Board's web site was reviewed along with where information is being sought.
- Legislation of interest to the Board, including Senate Bill 248, Senate Bill 298, and Assembly Bill 1718, were discussed.

The Board took the following actions:

- Unanimously approved presenting a resolution to Jay Gorman, Executive Vice President, California Motor Car Dealers Association in commemoration of his contribution to the automobile industry.
- Adopted revisions to the Board's mission and vision statements - please refer to page 8 to view revised statements.
- Unanimously approved a website link to N.A.D.A. Appraisal Guides subject to a legal disclaimer.
- Unanimously approved the use of Staff Counsel for Mandatory Settlement Conferences in response to a reduction in the Board's personnel services budget.

BOARD MEETING RECAP

June 17, 2003

- The Board was briefed on the status of the San Fernando Valley Project by R.F. "Ron" Sobrero, General Manager, Dealer Relations, Vehicle Sales, Service and Marketing, General Motors Corporation.
- The Board received a report on the types of e-mail requests for information that the Board receives.
- A status report regarding the Board's collection of the Arbitration Certification Programs' annual fee was reviewed.
- The Board's 3rd quarter financial condition for fiscal year 2002-2003 was discussed.
- The Board was informed of the new manufacturer/distributor licensees within the Board's jurisdiction.
- Legislation of interest to the Board, including Senate Bill 248, Senate Bill 298, and Assembly Bill 1718, were discussed.

The Board took the following actions:

- The Board unanimously moved to present a Resolution to Solon Soteras, former Public member.
- The Board unanimously moved to present a Resolution to Wendy Brogin, former Public member.
- The Board approved the out-of-state travel plan for fiscal year 2003-2004.
- The Board approved a policy requiring litigants to pay court reporter costs for transcripts not normally ordered by the Board.



RECENT BOARD DECISIONS AND RULINGS

The Board considered the following Proposed Decisions at the April 24, 2003, General Board Meeting:

Daugherty Lincoln Mercury v. Ford Motor Company, Lincoln Mercury Division

Protest No. PR-1798-02 (Adopted ALJ's Proposed Decision to overrule the termination protest)

The Board considered the following Proposed Decisions at the June 17, 2003, General Board Meeting:

Michael Cadillac, Inc. dba Michael Volkswagen v. Volkswagen of America, Inc.

Protest No. PR-1819-02 (Adopted ALJ's Proposed Decision, see page 6)

University Ford, dba Bob Baker Ford v. Ford Motor Company

Petition No. P-450-02 (Remanded for Additional Briefing on the Standard of Review, see page 6))

PENDING COURT CASES



Mazda Motor of America, Inc. v. California New Motor Vehicle Board; David J. Phillips Buick-Pontiac, dba David J. Phillips Mazda, Real Party in Interest

Third District Court of Appeal, December 7, 2001

The legal issue is whether the Board has the statutory authority under Vehicle Code section 3050(c) to adjudicate petition disputes when both parties are licensees, i.e., new motor vehicle dealers, manufacturers, and distributors.

The case is fully briefed and the parties are awaiting a decision by the Third District Court of Appeal. Oral argument took place on July 22, 2003.

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FORD MOTOR CO. v. NEW MOTOR VEHICLE BOARD, Respondent; UNIVERSITY FORD dba BOB BAKER FORD, Real Party in Interest
Sacramento County Superior Court, March 19, 2003

The legal issue is identical to that presented in the above Mazda case before the Third District Court of Appeal, i.e., whether the Board has the statutory authority under Vehicle Code section 3050(c) to adjudicate petition disputes when both parties are licensees, i.e., new motor vehicle dealers, manufacturers, and distributors.

On March 19, 2003, Ford filed an Application For Stay of the Petition (P-450-02) before the Board and an Application for Alternative Writs of Mandamus with the Sacramento Superior Court. The Application for Stay was denied. The Writ proceedings are scheduled for October 3, 2003, in Department 11.

SCHEDULED HEARINGS

August 19, 2003 - PR-1851-03

Sonic-Carson Lincoln Mercury v. Lincoln Mercury

September 16, 2003 - PR-1850-03

Martlett Ventures, LLC, dba Kia of Huntington Beach v. Kia Motors America, Inc.

September 23, 2003 - PR-1856-03

Nissan of Fontana, Inc. dba Planet Nissan v. Nissan North America, Inc.

September 29, 2003 - PR-1844-03

Fremont Automobile Dealership, LLP dba Fremont Toyota v. Toyota Motor Sales, U.S.A.

September 30, 2003 - PR-1857-03

Empire Nissan, Inc. dba Empire Nissan v. Nissan North America, Inc.

October 14, 2003 - PR-1839-03

Steve Taub, Inc., dba Taub Audi v. Audi of America, Inc.

October 14, 2003 - PR-1854-03, PR-1855-03

HUJ, Inc. dba Circle Mitsubishi; MMIP Dealer Corp. dba Torrance Mitsubishi v. Mitsubishi Motors North America, Inc.

November 3, 2003 - PR-1860-03

University Ford, Inc., dba Bob Baker Ford v. Ford Motor Company

November 10, 2003 - PR-1860-03

Nissan of Fontana, Inc. dba Metro Nissan/Hyundai of Redlands v. Hyundai Motor America

December 1, 2003 - PR-1772-02

Melrose Ford v. Ford Motor Company

Dates are subject to change and cases may settle prior to hearing

BOARD DECISION UPDATES

UNIVERSITY FORD, dba BOB BAKER FORD v. FORD MOTOR COMPANY PETITION NO. P-450-02

Asbury Automotive owns seven Ford and five Lincoln-Mercury dealerships in various regions of the country, but none in California. In 2002, Asbury and Bob Baker negotiated a transaction for the purchase of Bob Baker's dealerships. Of the 10 franchises in the sale, all manufactures except Ford, Toyota, and Lexus approved the sale.

Ford's decision to withhold consent was based on the following:

- (a) By the end of 2001, four of seven Asbury-owned dealerships failed to achieve market share at regional average in car and truck sales.
- (b) All of the Asbury Ford dealerships, except North Point in car and Dee Thomason in truck, showed declining market share after being acquired by Asbury.
- (c) Four of seven Asbury dealerships were below group in customer satisfaction index.
- (d) Three of seven of Asbury's Ford stores and none of Asbury's Lincoln-Mercury stores achieved all three benchmarks.
- (e) In actual retail sales, except for one store, the combined car and truck sales were significantly less for Asbury-owned stores as compared to region.
- (f) In calculating sales, if the Asbury stores had performed at the same levels as before their purchases, Ford would have sold 5,218 more vehicles.

(g) The cumulative decline in sales from 1999 through September 2002 for Asbury was -32.0% as compared with a decline of Ford sales in the nation of -9.0%. (Note: Toyota and Lexus have yet to approve the sale).

The Administrative Law Judge found that Respondent established that the proposed replacement dealer candidate Asbury was materially deficient in sales performance and customer satisfaction and that its withholding of consent to the Asbury purchase of Petitioner's dealership was not unreasonable. On June 17, 2003, the Board remanded the matter for additional briefing on the proper standard of administrative review under Vehicle Code section 11713.3(d)(3). The Proposed Decision After Remand held that "based on the evidence contained in the Findings of Fact of the Proposed Decision under the independent judgment standard of review established by section 11713.3(d)(3), Petitioner has failed to establish its burden of proving that the withholding of consent by Respondent Ford was unreasonable." On July 21, 2003, the Public members of the Board met and adopted this as their Decision.

MICHAEL CADILLAC, INC., dba MICHAEL VOLKSWAGEN v. VOLKSWAGEN OF AMERICA, INC. PROTEST NO. PR- 1819-02

In the Fresno market there are five Toyota dealers, three Honda dealers, three Nissan dealers and one Volkswagen dealer. VW sought to establish a second dealer in Clovis, 4.8 miles from Protestant.

Michael's expert conceded that the Fresno market is large enough to support two Volkswagen dealerships, but contended that it would be more convenient to a larger number of customers if located in Selma, twenty miles to the South.

Data presented by experts from both sides showed that Michael's present penetration rate is below the California and U.S. average rates and if Protestant and the proposed new dealer merely equaled the average Volkswagen penetration rate achieved by comparable groups of dealers, they would each have a profitable operation.

Volkswagen also argued that Michael sells its Volkswagens at a very high gross profit, due to the lack of competition in the Fresno market.

The Administrative Law Judge recommended overruling the protest and allowing Volkswagen to establish the new dealer in Clovis. The Board adopted the Administrative Law Judge's decision.

ACTIVE NMVB CASES

<u>Vehicle Code Section</u>	<u>Active</u>
3060 Termination/Modification	10
3062 Establishment/Relocation	13
3064 Delivery and Preparation	0
3065 Warranty Reimbursement	0
3065.1 Franchisor Incentive	0
TOTAL PROTESTS:	23
3050(c) PETITIONS	6
3050(b) APPEALS	0
TOTAL CASES:	29



MEDIATION SPOTLIGHT

Mediation Services
Representative
Heather Collins

On February 3, 2003, the New Motor Vehicle Board Consumer Mediation Services Program received a mediation request from a consumer regarding the lease of a 2002 Volkswagen GTI 1.8T. Mediation Services Representative, Heather Collins, was assigned to the case.

The consumer expressed concern that the vehicle had been in for service and maintenance work seven times since the original lease date of October 2001. As a result, the vehicle was out of service a total of 41 days.

On February 6, 2003, Ms. Collins sent a letter to Volkswagen of America, Inc. along with a copy of the consumer's complaint, requesting an accounting of all actions taken. A letter and copy of complaint was also sent to Roseville Volkswagen.

Roseville Volkswagen responded via letter dated March 13, 2003, stating they understood that the warranty repairs performed created an inconvenience for the consumer, but that the repairs were not major component repairs or replacements, and as such, would not negatively affect the future value or serviceability of the vehicle.

On March 17, 2003, the consumer received a letter from Volkswagen of America, Inc. apologizing for the consumer's unfortunate ownership experience. As a gesture of goodwill, they offered to repurchase the vehicle and to reimburse the consumer \$2,809.93.

On March 14, 2003, Ms. Collins received a letter from the consumer stating he had accepted the repurchase offer from Volkswagen of America, Inc., and was very happy. He expressed his appreciation to Ms. Collins for her efforts in resolving the matter.

The New Motor Vehicle Board Consumer Mediation Services Program successfully assisted another consumer when a mediation request was received on March 12, 2003, regarding a July 31, 2002, purchase of a 4 passenger Global Electric Motors ("GEM") vehicle. Mediation Services Representative, Heather Collins, was assigned to the case.

The consumer stated that at the time of the purchase, he had ordered and paid Lasher Auto for the installation of the hard door option and a 72 volt power plug. He was told that the doors would be installed within two months.

Two months elapsed and the consumer did not receive his vehicle. The consumer contacted both Lasher Auto and GEM and he was told that the installation would take another two months because of engineering problems.

Again, the consumer waited two months for the installation of the doors and the power plug before contacting Lasher Auto and Gem. When he did initiate contact, he was informed that the doors could not be added to his vehicle due to a retrofitting problem. GEM offered to replace the vehicle with a vehicle that had hard doors as original equipment; however, the consumer would once again have to wait an additional two months. After this interaction, the consumer contacted the New Motor Vehicle Board.

On March 13, 2003, Ms. Collins contacted both GEM and Lasher Auto regarding the consumer's concerns. On March 31, 2003, Ms. Collins received a letter from GEM stating that they and the consumer had reached an agreement wherein the consumer would accept another car with original equipment doors at a reduced sales price.

On April 10, 2003, the consumer emailed Ms. Collins thanking her for her assistance in resolving the complaint to his satisfaction.

MEDIATION STATISTICS

Mediation Phone Calls Received	3,928
Mediation Request Forms Sent to Consumers	1474
Cases Filed	418

July 2002 through June 2003

You can reach Mediation Services Staff at
(916) 445-1888

UPCOMING BOARD MEETINGS

Special Board Meeting
August 27, 2003
Los Angeles

General Board Meeting
September 16, 2003
Los Angeles



General Board Meeting
November 7, 2003
San Francisco

Special Board Meeting
December 9, 2003
Sacramento

Board Meeting dates are subject to change. A meeting agenda with time and location details is mailed 10 days prior to the meeting to all interested parties.

BOARD COMMITTEES

Administration Committee

Chair: Robert Branzuela
Member: Alan Skobin

Board Development Committee

Chair: Tom Flesh
Member: Vacant

Executive Committee

Chair: Glenn Stevens, President
Member: David Wilson, Vice President

Fiscal Committee

Chair: Angelo Quaranta
Member: Vacant

Government and Industry Affairs Committee

Chair: Tom Flesh
Member: Vacant

Policy and Procedure Committee

Chair: Alan Skobin
Member: David Lizárraga

NMVB MISSION STATEMENT

It is the mission of the New Motor Vehicle Board to resolve disputes in the new motor vehicle industry in an efficient, fair and cost-effective manner.

NMVB VISION STATEMENT

Safeguard for the Board's constituency, a fair, expeditious and efficient forum for resolving new motor vehicle industry disputes which ultimately improves industry relations and reduces the need for costly litigation. Develop methods that further improve the delivery of Board services in a timely and cost-effective manner. Educate board members concerning industry matters which further improve the Board's ability to equitably resolve industry disputes.

REVENUE

NEW MOTOR VEHICLE DEALER Annual Fee:	\$ 524,319.00
NEW MOTOR VEHICLE BOARD Filing fees:	20,600.00
NEW MOTOR VEHICLE BOARD Manufacturer/Distributor Annual fee:	740,744.40
Document Requests:	5,788.40
Arbitration Cert. Program Reimbursement	2,584.81
July 1, 2002 - May 31, 2003	\$ 1,294,036.61